AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 7: The Republican Era – Federalism/States and the Commerce Clause

**Morgan’s Steamship Co. v. Louisiana Board of Health, 118 U.S. 455 (1886)**

*Soon after statehood, Louisiana created a state board of health with the power to establish a quarantine station on the Mississippi River downriver from New Orleans. Officials were empowered to examine vessels going upriver from the Gulf of Mexico and their contents. If anything was found to threaten the safety of the city of New Orleans, a health officer could order a quarantine until the danger was removed. Otherwise, the vessel would be certified as having passed quarantine inspection and sent on its way. Vessels were charged an inspection fee by the state to defray the costs of operating the station.*

*Morgan’s Steamship Co. contended that the inspection fee was in violation of the federal constitutional prohibition on tonnage taxes and a regulation on commerce that is exclusively within the jurisdiction of the federal government. It sought an injunction in state court to block the board of health from collecting the fee. The state trial court agreed, and the government appealed to the state supreme court, which reversed the trial court. The steamship company appealed to the U.S. Supreme Court, which unanimously affirmed the state supreme court and upheld the constitutional validity of the quarantine fee.*

JUSTICE MILLER, delivered the opinion of the Court.

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If there is a city in the United States which has need of quarantine laws, it is New Orleans. Although situated over a hundred miles from the Gulf of Mexico, it is the largest city which partakes of its commerce, and more vessels of every character come to and depart from it than any city connected with that commerce. Partaking as it does of the liability to diseases of warm climates, and in the same danger of all other seaports of cholera and other contagious and infectious disorders, these are sources of anxiety to its inhabitants, and to all the interior population of the country who may be affected by their spread among them. Whatever may be the truth with regard to the contagious character of yellow fever and cholera, there can be no doubt of the general belief, and very little of the fact, that all the invasions of these epidemics in the great valley of the Mississippi River and its tributaries in times past have been supposed to have spread from New Orleans, and to have been carried by steamboats and other vessels engaged in commerce with that city. And the origin of these diseases is almost invariably attributed to vessels ascending the Mississippi River from the West Indies and South America, where yellow fever is epidemic almost every year, and from European countries, whence our invasions of cholera uniformly come.

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. . . . Is this requirement that each vessel shall pay the officer who examines it a fixed compensation for that service a "tax?" A "tax" is defined to be "a contribution imposed by government on individuals for the service of the state." It is argued that a part of these fees goes into the treasury of the state or of the city, and it is therefore levied as part of the revenue of the state or city, and for that purpose. But an examination of the statute shows that the excess of the fees of this officer over his salary is paid into the city treasury to constitute a fund wholly devoted to quarantine expenses, and that no part of it ever goes to defray the expenses of the state or city government.

That the vessel itself has the primary and deepest interest in this examination it is easy to see. It is obviously to her interest, in the pursuit of her business, that she enter the city and depart from it free from the suspicion which at certain times attaches to all vessels coming from the Gulf. This she obtains by the examination, and can obtain in no other way. If the law did not make this provision for ascertaining her freedom from infection, it would be compelled to enact more stringent and more expensive penalties against the vessel herself when it was found that she had come to the city from an infected port, or had brought contagious persons or contagious matter with her, and throwing the responsibility for this on the vessel, the heaviest punishment would be necessary, by fine and imprisonment, for any neglect of the duty thus imposed. . . .

It seems to us that this is much more clearly a fair charge against the vessel than that of half pilotage, where the pilot's services are declined and where all the pilot has done is to offer himself. This latter has been so repeatedly held to be a valid charge, though made under state laws, as to need no citations to sustain it.

In all cases of this kind it has been repeatedly held that when the question is raised whether the state statute is a just exercise of state power or is intended by roundabout means to invade the domain of federal authority, this Court will look into the operation and effect of the statute to discern its purpose. *Henderson v. Mayor of New York* (1875).

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In the present case, we are of opinion that the fee complained of is not a tonnage tax; that in fact it is not a "tax" within the true meaning of that word as used in the Constitution, but is a compensation for a service rendered, as part of the quarantine system of all countries, to the vessel which receives the certificate that declares it free from further quarantine requirements.

Is the law under consideration void as a regulation of commerce? Undoubtedly it is, in some sense, a regulation of commerce. It arrests a vessel on a voyage which may have been a long one. It may affect commerce among the states when the vessel is coming from some other state of the union than Louisiana, and it may affect commerce with foreign nations when the vessel arrested comes from a foreign port. This interruption of the voyage may be for days or for weeks. It extends to the vessel, the cargo, the officers and seamen, and the passengers. Insofar as it provides a rule by which this power is exercised, it cannot be denied that it regulates commerce. We do not think it necessary to enter into the inquiry whether, notwithstanding this, it is to be classed among those police powers which were retained by the states as exclusively their own, and therefore not ceded to Congress, for while it may be a police power in the sense that all provisions for the health, comfort, and security of the citizens are police regulations and an exercise of the police power, it has been said more than once in this Court that even where such powers are so exercised as to come within the domain of federal authority as defined by the Constitution, the latter must prevail. *Gibbons v. Ogden* (1824).

But it may be conceded that whenever Congress shall undertake to provide for the commercial cities of the United States a general system of quarantine, or shall confide the execution of the details of such a system to a national Board of Health, or to local boards, as may be found expedient, all state laws on the subject will be abrogated at least so far as the two are inconsistent; but until this is done, the laws of the state on the subject are valid. . . .

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. . . [Q]uarantine laws belong to that class of state legislation which, whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of Congress. The matter is one in which the rules that should govern it may in many respects be different in different localities, and for that reason be better understood and more wisely established by the local authorities. The practice which should control a quarantine station on the Mississippi River, a hundred miles from the sea, may be widely and wisely different from that which is best for the harbor of New York. In this respect, the case falls within the principle which governed the cases of *Willson v. Blackbird Creek Marsh Co.* (1829); *Cooley v. Board of Wardens* (1852). . . .

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For the period of nearly a century since the government was organized, Congress has passed no quarantine law, nor any other law to protect the inhabitants of the United States against the invasion of contagious and infectious diseases from abroad, and yet, during the early part of the present century, for many years, the cities of the Atlantic coast, from Boston and New York to Charleston, were devastated by the yellow fever. In later times, the cholera has made similar invasions, and the yellow fever has been unchecked in its fearful course in the southern cities, New Orleans especially, for several generations. During all this time, the Congress of the United States never attempted to exercise this or any other power to protect the people from the ravages of these dreadful diseases. No doubt they believed that the power to do this belonged to the states, or, if it ever occurred to any of its members that Congress might do something in that way, they probably believed that what ought to be done could be better and more wisely done by the authorities of the states who were familiar with the matter.

But to be told now that the requirement of a vessel charged with contagion, or just from an infected city, to submit to examination, and pay the cost of it is forbidden by the Constitution because only Congress can do that is a strong reproach upon the wisdom of a hundred years past or an overstrained construction of the Constitution.

. . . . If the arrest of the vessel, the detention of its passengers, the cleansing process it is ordered to go through with, are less important as regulations of commerce than the exaction of the examination fee, it is not easily to be seen.

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*Affirmed*.